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September 11, 2014

**VIA EMAIL**

The Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, NY 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: September 15, 2014

Re: *Kickstarter, Inc. v. ArtistShare, Inc. and Fan Funded, LLC*,  
11-cv-6909 (S.D.N.Y.)

**MEMO ENDORSED**

Dear Judge Failla:

Pursuant to Rule 6A of your Individual Practices, Defendants ArtistShare, Inc. and Fan Funded, LLC (ArtistShare) respectfully request leave to file portions of the Parties' Joint Appendix in connection with summary judgment briefing under seal. Specifically, ArtistShare requests leave to file information regarding the identity of its licensees and its potential licensees under seal.

The identity of ArtistShare's licensees and its potential licensees is "highly sensitive because it contains proprietary business or competitive information," and is therefore HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information pursuant to the Protective Order that was entered by Judge Crotty. *See* D.I. 46 at ¶2. ArtistShare does not publicly disclose the identity of its licensees or potential licensees, making this information "non-public ... confidential business ... information," and therefore CONFIDENTIAL under the Protective Order as well. Thus, the identity of ArtistShare's licensees and potential licensees qualifies as CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information under the Protective Order. ArtistShare therefore respectfully requests leave to file this information under seal, pursuant to Paragraph 11 of the Protective Order, and file redacted versions of the relevant exhibits publicly.

This Court's precedent clearly supports allowing ArtistShare to file this information under seal. ArtistShare's list of licensees and potential licensees is akin to a customer list, which has traditionally been treated as a trade secret and not subject to public filing. *See, e.g., ABC Rug & Carpet Cleaning Svs., Inc. v. ABC Rug Cleaners, Inc.*, No. 08-cv-5747, 2009 WL 105503, \*4 (S.D.N.Y. Jan 14, 2009) (ordering the parties to enter into a protective order for treatment of customer lists). As with any confidential customer list, ArtistShare has spent significant time and effort identifying and negotiating with its licensees and potential licensees and does not publicly disclose that information. *See generally* Smith Declaration (enclosed herewith). As such, it would be appropriate to allow ArtistShare to redact this information from the public record.

ArtistShare requests confidential treatment for Exhibits 45 (ArtistShare Interrogatory Responses), 46 (Responsive Expert Report of Marshall Monroe), and 42 (August 16, 2013

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Deposition Transcript of Brian Camelio) from the Parties' Joint Appendix in connection with summary judgment briefing. Pursuant to Rule 6A of Your Honor's Individual Practices, ArtistShare has enclosed herewith the following documents for the Court's review: (1) one full set of the aforementioned documents in highlighted form; and (2) one partial set of solely those pages on which ArtistShare seeks to redact material. ArtistShare's proposed redactions from these exhibits are narrowly tailored to address information regarding the identity of ArtistShare's licensees and potential licensees for the '887 Patent.

ArtistShare respectfully submits that ArtistShare has shown good cause for filing information regarding the identity of its licensees and its potential licensees under seal.

Yours truly,



Craig R. Smith

cc: All counsel of record

Application GRANTED. ArtistShare is hereby permitted to redact and file Exhibits 42, 45, and 46 to the Parties' Joint Appendix in accordance with the proposed redactions submitted to the Court on September 11, 2014. Chambers will file the unredacted portions of the redacted exhibits under seal.

Dated: September 15, 2014  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE